

**From:** Josh Fishman  
**To:** Microsoft ATR  
**Date:** 1/23/02 1:54pm  
**Subject:** Microsoft Settlement

Dear Madam and/or Sir,

I'd like to register my distaste for the proposed Microsoft settlement. The proposed settlement would allow Microsoft to continue its worst practices unabated, while pretending to have paid for its crimes.

Here is a partial list of the practices which must be stopped by any real settlement or judgement:

- 1) Software Bundling AND Exclusion: by selectively disallowing and mandating what software is provided with a new computer, Microsoft controls which 3rd party software will be allowed to flourish.
- 2) Boot Loader Exclusion: by forcing Windows to boot before loading any other software, Microsoft prevents vendors from offering systems loaded with more than one operating system. Consumers who would like Windows and Linux or BeOS or OS/2 (or any other operating system) are forced to do the second installation themselves.
- 3) Punitive Pricing: by punishing vendors who do not load Windows on every system, Microsoft creates an artificial barrier to entry for competing operating systems.
- 4) Gag Clauses: by disallowing discussion among those who own or otherwise know the performance characteristics of their software, Microsoft guarantees that the only voice heard will be that of their advertising dollar -- not the voice of reason or experience.
- 5) Misleading Advertisements: by advertising features and / or products which do not exist, Microsoft sows fear about the viability of real products which would compete.

There are some obvious solutions to these problems:

- 1) Disallow Microsoft from writing contracts which prohibit OR mandate any particular software.
- 2) Disallow Microsoft from writing contracts which prohibit OR mandate any particular boot sequence.
- 3) Publish all Microsoft software prices. This will make the DoJ's job

significantly easier, as all vendor pricing will be instantly available for inspection.

4) Disallow Microsoft from writing contracts with gag clauses. Declare all such clauses null and void, and allow customers to discuss their experiences with and benchmarks of Microsoft software.

5) Prohibit advertisements for products and / or features which do not exist. Enforcement would be problematic; perhaps offer a bounty to citizens, which Microsoft would pay directly, for spotting such ads?

These remedies would not completely fix Microsoft. For example, the company would still be able to use its patents to intimidate competing vendors and open source projects. However, any remedy which does not address these issues is insufficient and lacking, and not worthy of this nation's Justice Department.

Thank you,

Joshua Fishman  
144 West 10th St.  
New York, NY 10014  
fishman@cns.nyu.edu